

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	09-CR-0003 (CBA)
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
DARIEN PUGHE,	:	
also known as	:	
"Fuso" and "Fu," and	:	
	:	
DEWAYNE TAYLOR,	:	
also known as "Anthony Watts,"	:	June 24, 2009
Defendant.	:	9:30 a.m.

CRIMINAL CAUSE FOR TRIAL

BEFORE THE HONORABLE CAROL B. AMON

UNITED STATES DISTRICT COURT JUDGE, AND A JURY

A P P E A R A N C E S:

For the Government:

United States Attorneys Office
Eastern District of New York
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Brooklyn, New York 11201
BY: MATTHEW AMATRUDA, ESO.

For Defendant Pughe:

Rothman, Schneider, Soloway & Stern, P.C.
100 Lafayette Street, Suite 501
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BY: DAVID STERN, ESQ.

For Defendant Taylor:

Federal Defenders of New York, Inc.
16 Court Street
Brooklyn, NY 11241
BY: LEN KAMDANG, ESQ.

Court Reporter: Nicole M. Warren, CSR, RMR, CRR
Official Court Reporter

Proceedings recorded by computerized stenography
Transcript produced by Computer-aided Transcription.

1 (In open court; all parties present.)

2 COURTROOM DEPUTY: The United States against Pughe and
3 Taylor.

4 THE COURT: I understand the defendants are getting
5 dressed, and we'll put this all on the record when we're in
6 here.

7 You've seen the note?

8 MR. STERN: I have. I think we agree how it should be
9 resolved. I think we think they should be told you have the
10 phone transcripts. You can look at any of them you choose to
11 look at.

12 They should be told there is no evidence of who bought
13 Mr. Pughe's bus ticket.

14 And although we would have to, I guess, technically
15 have the transcript read back, I think we can agree if we can
16 get the number out of the transcript.

17 They say, "If available, outside the transcript being
18 read."

19 THE COURT: I think they don't want to come in and
20 have the transcript --

21 MR. STERN: Since it's in the transcript and we all
22 agree that was the number testified to -- I don't mean to speak
23 for Mr. Kamdang -- I would agree to have it read back to us and
24 give them that number.

25 THE COURT: Okay.

1 Is that acceptable to the Government?

2 MR. AMATRUDA: The only thing I would say is not -- I
3 don't want to quibble too much with the wording of the issue
4 of, you know, there not being evidence in the transcripts of
5 who purchased the bus ticket. I -- the Government's preference
6 would be to tell the jury that there was no testimony
7 concerning that subject.

8 THE COURT: That's the same as there was no evidence
9 presented concerning that subject, right?

10 MR. STERN: I think it misleads them. There was no
11 evidence. There was not a shred of evidence as to who
12 purchased that bus ticket, whether it's testimonial, by
13 stipulation, by anything. There just was no evidence. It's
14 not just that there was no testimony.

15 THE COURT: You're sure all the transcripts were sent
16 back, Mr. Amatruda? The transcript went back?

17 MR. AMATRUDA: Judge, my understanding was that it
18 was; but we have identical copies of it. We can send it. I
19 didn't put it in the bin because I was told that it was sent
20 back already.

21 THE COURT: Who would have sent it back? Not us.

22 MR. AMATRUDA: Judge, I honestly don't know. It seems
23 like there was a mistake. Certainly it wasn't -- the reason I
24 didn't send it back is because I thought it was already there.

25 THE COURT: Who would have sent it back if you didn't

1 give it to us?

2 MR. AMATRUDA: My impression was that Vanessa, your
3 court deputy, sent it back. I don't know that that was --
4 obviously, I was under a misimpression. I'm not saying it was
5 her job to do it and it didn't get done. I'm just saying
6 that's what I thought.

7 THE COURT: We would never have sent back exhibits
8 that people hadn't looked at on our own.

9 Ms. Holley, I take it you didn't send back the
10 transcript, correct?

11 COURTROOM DEPUTY: No, Judge. I only picked up the
12 box that was prepared in the courtroom and gave it to the
13 marshal, and the chart.

14 THE COURT: Before the parties had said that they had
15 no opposition to the transcript going back, correct?

16 MR. STERN: Correct.

17 MR. KAMDANG: That's correct.

18 THE COURT: All right. Then do we have a transcript
19 book? 'Cause they don't have it, I guess.

20 MR. AMATRUDA: I sent Agent McNally about ten minutes
21 ago to get it. So, it will be here momentarily.

22 MR. KAMDANG: I have one in the conference room.

23 THE COURT: I want to make sure we have the one that
24 was limited. I mean, there were a lot of rulings that we had.

25 MR. STERN: I do, too. Judge, if it's okay, I'm going

1 to go back and tell my client about what this note was.

2 THE COURT: Why aren't they coming out? Are they
3 still getting dressed?

4 (Defendants Pughe and Taylor enter the courtroom.)

5 THE COURT: All right. The record should reflect that
6 the defendants have been brought into court.

7 Mr. Pughe and Mr. Taylor, we received a note from the
8 jury.

9 Mr. Taylor, you've read the note; is that correct?

10 DEFENDANT TAYLOR: Yes. Yes.

11 THE COURT: All right. I just want to make sure
12 Mr. Pughe has -- I'm not going to bring the jury out. So,
13 nobody has to have their -- be dressed.

14 All right. Have you shown the note?

15 MR. STERN: Judge, is your plan to give them written
16 answers to these questions?

17 THE COURT: Yes. Here's what I would propose.

18 "In response to your note marked Court Exhibit 8,
19 please be advised attached is the transcript book."

20 Okay. We located in the transcripts of the
21 proceedings the telephone number of Darien Pughe. It is --
22 now, you agree on what that is?

23 MR. AMATRUDA: The court reporter read it.

24 THE COURT: And what was the number?

25 THE COURT REPORTER: (Reads number).

1 THE COURT: That number has just been read to the
2 Court by the court reporter, and the number is (718) 913-5135.

3 Is it acceptable to both defendants to have that
4 information presented to the jury in this way?

5 MR. STERN: It is. That's what officer's testimony
6 was.

7 THE COURT: All right. Was it testified to by
8 somebody?

9 MR. STERN: Officer Taylor, I think.

10 MR. AMATRUDA: Yes, Judge.

11 THE COURT: It is as testified to by Officer Taylor.
12 Maybe that's what I'll write.

13 MR. KAMDANG: Maybe it should be that officer
14 testified that the number is this, rather than the phone number
15 is --

16 MR. AMATRUDA: If we're going to do that, it should be
17 Officer Taylor testified that Darien Pughe gave this phone
18 number as his phone number. That's more accurate.

19 MR. STERN: I think we're getting carried away. They
20 asked for the phone number.

21 THE COURT: Let me read it to you again and see if
22 this satisfies everyone.

23 "We located in the transcripts of the proceedings
24 evidence as to the telephone number of Darien Pughe."

25 Is that better?

1 MR. STERN: It's all okay with me.

2 THE COURT: I was going say, "the telephone number of
3 Darien Pughe."

4 Do you have a problem with that?

5 MR. KAMDANG: What's the --

6 THE COURT: "We located in the transcript of the
7 proceedings the telephone of Darien Pughe. It is (718) 913-5135
8 as testified to by Officer Taylor."

9 MR. STERN: I have no problem with that.

10 THE COURT: Do you have a problem with that?

11 MR. KAMDANG: I don't.

12 THE COURT: Okay. There is -- and then the last
13 question is: "There is no evidence as to -- in the record as
14 to who purchased the bus ticket that Darien Pughe traveled on."

15 Isn't that a correct statement?

16 MR. STERN: Is that correct.

17 MR. AMATRUDA: Fine.

18 THE COURT: All right.

19 (Brief pause.)

20 THE COURT: Okay. Let me show you this note so you
21 can both look at it, everybody can look at it before it goes
22 back.

23 (All attorneys view the note.)

24 THE COURT: Have you examined the transcript book
25 that's going back?

1 MR. STERN: I have.

2 MR. AMATRUDA: Judge, I --

3 THE COURT: Mr. Kamdang?

4 MR. KAMDANG: I'm doing it right now, your Honor.

5 MR. AMATRUDA: There's another issue which is that
6 Agent McNally believes that there is a transcript binder back
7 there with the jury that we put in the box that went back
8 there. That's fine. It was one that we all looked at and
9 agreed on.

10 However, Mr. Stern noticed today that there was a
11 couple of lines in Mr. Pughe's call, the transcript of
12 Mr. Pughe's call we needed to redact from this binder. If the
13 unredacted binder is back with the jury, we need to get that
14 back and -- from them to redact those lines from it.

15 THE COURT: What's the point of my staying in court
16 baby-sitting everyone for almost 40 minutes yesterday if it
17 wasn't to have people go through these exhibits and make sure
18 there weren't any problems?

19 MR. AMATRUDA: You're right, Judge, and it -- we
20 obviously -- we didn't do what you thought we should or what we
21 should have done, if this is the case but it is -- I believe
22 it's an inadvertent mistake, if one is made, and we're trying
23 to figure out what to do to correct it.

24 THE COURT: What was the nature of the information
25 that wasn't redacted?

1 MR. STERN: It actually was the same as the statement
2 that precedes it really. It just wasn't in evidence. I
3 think -- I don't have the unredacted copy.

4 THE COURT: So, it's nothing prejudicial.

5 MR. STERN: Not really, no. No, no, it's just if you
6 give me that, I think I can tell you what the statement is.

7 THE COURT: This one says -- it's the first transcript
8 of Mr. Pughe?

9 MR. STERN: Yes.

10 MR. AMATRUDA: Here it is, David. Here it is.

11 MR. STERN: The first part says, "You see I go out to
12 Tennessee for us. You know what I'm saying."

13 The second part is, "The crazy shit is, the crazy shit
14 is I went out there for us."

15 It's not really significantly different in any way.
16 It's just not in evidence.

17 THE COURT: All right. Here's what I'm going to add.

18 "Attached is a transcript book. If you have another
19 copy of the transcript book, return it to the marshal; and use
20 this one."

21 MR. STERN: That's fine.

22 THE COURT: Okay. Because you're not positive it went
23 back, are you?

24 MR. AMATRUDA: I'm not, Judge.

25 THE COURT: All right. Does that handle the matter?

1 MR. STERN: It does.

2 MR. KAMDANG: Yes, your Honor.

3 THE COURT: Does anybody else have any other
4 questions?

5 MR. STERN: No.

6 THE COURT: I mean, it seems to me to be of no moment.

7 MR. STERN: I agree with that. If I thought it was
8 important, I would try to do something. I don't really think
9 it's that important.

10 THE COURT: I didn't mean to be so snappy with
11 everyone. It's just that I get very concerned about this issue
12 because I have had occasions and other judges have had
13 occasions in this court where after weeks of trial there have
14 been mistrials because people have inadvertently put materials
15 in there and there's just no need for that kind of --

16 MR. AMATRUDA: That's understandable, Judge. Again, I
17 apologize.

18 THE COURT: Okay.

19 (Off the record.)

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1 (In open court; all parties presents.)

2 (Defendants enter the courtroom.)

3 THE COURT: All right. Have the parties seen the
4 note?

5 MR. STERN: We have.

6 MR. KAMDANG: Yes, Judge.

7 MR. AMATRUDA: Yes.

8 THE COURT: I'll read the note into the record which
9 has been marked as Court Exhibit 10.

10 "Dear Judge Amon, we would like to obtain clarity on
11 the following:

12 In reading the verdict sheet, the charge reads as
13 conspiracy to distribute and possess with intent to distribute.

14 Is the charge a joint charge? Meaning, do we need to
15 find not guilty if we unanimously agree that on the possession
16 with intent to distribute is not guilty but one not agree on
17 the conspiracy to distribute?"

18 MR. STERN: I think it says "are not agreed."

19 THE COURT: Is it are?

20 MR. STERN: It does look like "one," but I think in
21 context it would be "are."

22 THE COURT: It would be better to be "are." They seem
23 to be fairly articulate writers. I guess you're right.

24 Does anybody have any proposed language that they want
25 me to submit to the jury?

1 MR. STERN: I think you should tell the jury that to
2 find the defendant guilty, they have to agree unanimously
3 beyond a reasonable doubt that he knowingly joined the
4 conspiracy to distribute narcotics, that it is a joint charge,
5 that they have to find both, either guilty or not guilty
6 unanimously.

7 I think that's what they mean by joint charge. I
8 think --

9 THE COURT: Well, there's a portion of the indictment
10 in page 8 --

11 MR. STERN: I don't have it.

12 THE COURT: Not the indictment. The charge. You
13 know, it says -- and let me just read it to you because I think
14 the Government has to prove one or the other and I said that to
15 them. I said:

16 "The indictment charges the defendants with conspiring
17 to commit two separate unlawful acts -- distribution of cocaine
18 base and possession with intent to district cocaine base. It
19 is not necessary for the Government to prove that the
20 defendants conspired to commit both of those unlawful acts.

21 If you find the Government has proven beyond a
22 reasonable doubt that a defendant conspired to commit either
23 one of these unlawful acts, you should find the defendant
24 guilty of the conspiracy charged in the indictment.

25 Let me caution you, however, that your decision as to

1 whether the defendant conspired to commit a particular unlawful
2 act, either distribution of cocaine base or possession with
3 intent to distribute cocaine base, must be unanimous."

4 So, that's what I charged them.

5 MR. STERN: I think that's an accurate statement of
6 the law.

7 THE COURT: That's what I think that they're asking.

8 MR. STERN: I think they're asking, "If we find him
9 not guilty of one, is he not guilty of the whole charge?"

10 THE COURT: And the answer is no.

11 MR. STERN: I agree with you. I think that's
12 unfortunate for me the answer. That's why I'm suggesting that
13 you tell them on the act which you have not decided
14 unanimously, you should consider to deliberate; and if you can,
15 reach a verdict whether or not he's guilty beyond a reasonable
16 doubt or not guilty.

17 THE COURT: Okay. But --

18 MR. AMATRUDA: Judge, just one other issue before
19 we -- oh, sorry. Go ahead.

20 THE COURT: Well, I was going to say: "To find the
21 defendant not guilty of Count One, you must find the Government
22 has failed to establish by proof beyond a reasonable doubt both
23 that he conspired to possess with intent to distribute cocaine
24 and he conspired to distribute cocaine. If you have not
25 reached a verdict with regard to both of these objectives, you

1 should continue to deliberate."

2 MR. STERN: No, because I think the problem with that
3 is they tell you specifically, "We have already decided as to
4 one, that he's not guilty." They only have the one remaining
5 prong, I'm going call it.

6 THE COURT: Okay. On the prong that you have not
7 reached a verdict on, you should continue to deliberate?

8 MR. STERN: I think you should just say what it is.
9 They say what it is. You should say what it is, too, not refer
10 to it as a prong but say:

11 "On the question as to whether or not Mr. Pughe
12 knowingly joined a conspiracy to distribute, you should
13 continue to deliberate; and if you can, reach a verdict
14 unanimously of guilty or not guilty."

15 THE COURT: Mr. Kamdang?

16 MR. KAMDANG: I think the statement of law is read.
17 The one thing that makes me a little bit concerned is the way
18 your Honor phrased it in order to find the defendant not
19 guilty.

20 THE COURT: Someone just write out -- I mean, why
21 don't you all try and agree on something you want me to say? I
22 know it's tricky. What -- I could read to them the paragraph I
23 just read to you from paragraph eight -- I mean, from page 8 of
24 the jury instructions. Then I could say if there's some other
25 way you want me to phrase it --

1 MR. STERN: We're going to try and write it out.

2 MR. AMATRUDA: I have another issue that relates to
3 this note. I'm concerned that the jury may be viewing the
4 instruction or the charge of conspiracy to distribute as one
5 part of it and possess with intent to distribute as another.

6 THE COURT: Right.

7 MR. AMATRUDA: And my concern about that is both
8 because of the way that the jury has separated the conspiracy
9 to distribute from possess with intent to distribute in their
10 quotation and also in their jury note they say that they have
11 unanimously agreed that on the possess with intent to
12 distribute.

13 He's not -- nobody's charged with possess with intent
14 to distribute and I think by answering -- I think there's a
15 preliminary issue which is, if for some reason the jury feels
16 that there's a substantive charge there, there's not and that
17 the conspiracy applies to both prongs.

18 MR. STERN: Judge, I don't think you're allowed to do
19 that. I think that would be delving into the operation of the
20 these jurors' minds. They have the charge back there with
21 them. They're perfectly capable of reading that. They don't
22 ask us to do that. I think our only job is to answer the
23 question they've asked and not to try and read the tea leaves
24 of this and give them information they've not requested.

25 MR. AMATRUDA: I guess rather than that, if

1 that's -- if your Honor --

2 THE COURT: Why don't I begin by reading them from
3 that paragraph from page 8? Okay. That says -- and that
4 explains the basic law. Okay. Then to say -- well, let me see
5 what -- maybe you want to try and come up with something.

6 MR. AMATRUDA: Maybe we can propose something?

7 THE COURT: Yes. My first intention is to read the
8 paragraph I did from page 8 to clarify, just to put it back
9 into perspective.

10 (Brief pause.)

11 MR. STERN: Judge, we have our suggestion, whenever
12 you're ready. Judge, I think you're going to have to resolve
13 something.

14 THE COURT: Let me try something. See if this
15 satisfies everybody.

16 The first thing I do is read that paragraph from page
17 8 that I just read to you. Then I would say:

18 "If you have agreed as to a not guilty verdict on
19 conspiracy with intent to distribute, you must then continue to
20 deliberate and try to reach a verdict on the conspiracy to
21 distribute prong."

22 Okay?

23 "If you find the defendant not guilty as to both the
24 conspiracy with intent to distribute and the conspiracy to
25 distribute, your verdict should be not guilty."

1 Okay?

2 MR. STERN: The only --

3 THE COURT: And then say:

4 "If you find that the Government has established by
5 proof beyond a reasonable doubt as to any defendant that there
6 was a conspiracy to distribute, your verdict should be guilty."

7 MR. STERN: I think ours is the same idea. I think
8 it's a little maybe more concise.

9 THE COURT: Okay.

10 MR. STERN: What we say is:

11 "On the charge in which you've unanimously agreed the
12 defendant is not guilty, you need no longer deliberate. On the
13 remaining question of whether the defendant or defendants you
14 are considering knowingly entered a conspiracy to distribute
15 narcotics, you must determine if the Government has carried
16 their burden of proving guilt beyond a reasonable doubt. If
17 the Government has failed to do so, you must find the defendant
18 not guilty."

19 The thought is the same as yours. I don't mean to say
20 the thought is not the same.

21 MR. AMATRUDA: I did something as well, Judge,
22 that -- again, without throwing too much at you here. My issue
23 I think -- my reading of this is the jury is asking: Do we
24 have to find the defendant not guilty if we unanimously agree
25 on one and not the other? What do we have to do to find a

1 defendant not guilty, I think is the essence of the question;
2 and I thought, as your Honor had proposed preliminarily, the
3 answer to that question is:

4 "In order to find a defendant not guilty, you must
5 unanimously agree that that defendant is not guilty of
6 conspiring to possess with intent to distribute and unanimously
7 agree that the defendant is not guilty of conspiracy to
8 distribute."

9 I think that answers the question of what they need to
10 do to find a defendant not guilty.

11 THE COURT: Let me just try this again 'cause --

12 MR. STERN: Can I give you ours, Judge?

13 THE COURT: I would start by saying that, you know
14 that -- reading from paragraph eight -- page 8, which nobody
15 has ever objected to, and then say:

16 "If you have unanimously agreed," because I'm assuming
17 they have. They could technically go back and change their
18 mind. I don't want to tell them they have to do something.

19 MR. STERN: That's true.

20 THE COURT: I want to say:

21 "If you have unanimously agreed as to not guilty on
22 conspiracy with intent to distribute, you must then continue to
23 deliberate and attempt to reach a verdict on conspiracy to
24 distribute."

25 MR. STERN: The first one is conspiracy to possess

1 with intent to distribute.

2 THE COURT: I'm sorry. Thank you.

3 "If you find the defendant not guilty as to both, your
4 verdict is not guilty. If you find the Government has
5 established by proof beyond a reasonable doubt that the
6 defendant -- that the defendants conspired either to possess
7 with intent to distribute or conspired to distribute, your
8 verdict would be guilty."

9 MR. STERN: That was the last or? Seemed like there
10 were a lot of "or's" in there.

11 THE COURT: "If you find the Government has
12 established by proof beyond a reasonable doubt that the
13 defendant," I guess I should say the defendant you are
14 considering.

15 MR. STERN: Yes.

16 MR. KAMDANG: I think it would be more complete to say
17 "the defendant knowingly conspired"; and that gives more
18 guidance."

19 MR. STERN: I agree.

20 THE COURT: All right. "If you find that the
21 Government has established by proof beyond a reasonable doubt
22 that the defendant you are considering conspired" --

23 MR. KAMDANG: Knowingly.

24 THE COURT: -- "knowingly either to possess with
25 intent to distribute or to distribute cocaine base, then your

1 verdict would be guilty."

2 MR. AMATRUDA: My --

3 MR. STERN: Could I read it or hear it one more time?

4 THE COURT: I don't blame you. It's important.

5 "If you have unanimously agreed as to not guilty on
6 conspiracy with intent to distribute, you must then continue to
7 deliberate to attempt to reach a verdict on conspiracy to
8 distribute."

9 But I want to tell them what the effective their
10 deliberations are.

11 "If you find the defendant you are considering not
12 guilty as to both conspiracy to possess with intent to
13 distribute and conspiracy to distribute, your verdict is not
14 guilty."

15 MR. KAMDANG: Maybe there should just be a marker
16 like, "thus, if you find," or, "accordingly, if you find."

17 MR. STERN: My preference would be to have you say:

18 "If you find the Government has failed to carry their
19 burden of proof beyond a reasonable doubt as to the
20 crime" -- as to the element or prong, I'm not sure what you
21 call it -- "of conspiracy to distribute, you then must find the
22 defendant not guilty."

23 And that is a must. That's not open to them. If they
24 find the Government has failed in their burden, they must find
25 him not guilty.

1 THE COURT: Maybe I should just answer the note "yes."
2 Just a thought.

3 MR. STERN: That would be a novel way to approach it.

4 MR. KAMDANG: Just write both.

5 (Brief pause.)

6 THE COURT: All right. Let me just try this on, okay,
7 for size.

8 "If you have unanimously agreed as to the defendant
9 you are considering that the Government has failed in its
10 burden of proof to establish a conspiracy to possess with
11 intent to distribute, you must continue your deliberations to
12 determine whether or not the Government has met its burden of
13 proof beyond a reasonable doubt to establish each of the
14 elements of conspiracy to distribute.

15 If you find that the Government has failed to
16 establish both" -- and then I'll say what that is -- "your
17 verdict is not guilty. If you find that the Government has met
18 its burden of proof with either 'blank' or 'blank,' your
19 verdict would be guilty."

20 MR. STERN: That's fine with me.

21 MR. AMATRUDA: Yeah, that's -- and, Judge, I take it
22 when you read both the you'll put the word -- I guess
23 Mr. Kamdang wanted it the words "knowingly conspire" in front
24 of both --

25 THE COURT: Instead of saying, "knowingly conspire,"

1 I'm going to say, "met its burden of proof with respect to each
2 of the elements of conspiracy," because then I won't single out
3 knowingly versus joint agreement versus --

4 MR. STERN: You're bringing them out to do this, I
5 take it, not sending them back?

6 THE COURT: Yes.

7 (Brief pause.)

8 THE COURT: Okay. Bring them out.

9 (The jury enters the courtroom.)

10 THE COURT: All right. Ladies and gentlemen, please
11 be seated.

12 And I have your note. It says:

13 "We would like to obtain clarity on the following. In
14 reading the verdict sheet, the charge reads as follows:
15 Conspiracy to distribute and possess with intent to distribute.

16 Is the charge a joint charge? Meaning, do we need to
17 find not guilty if we unanimously agree that on possession with
18 intent distribute is not guilty but are" -- I think word is
19 "are not agreed" -- I think that's -- "are" is the word -- "on
20 the conspiracy to distribute."

21 Now, hopefully I'll be able to explain this to you
22 correctly.

23 First of all, I'm going to read a portion of the
24 charge on page 8 and that is that:

25 "The indictment charges the defendants with conspiring

1 to commit two separate unlawful acts -- distribution of cocaine
2 base and possession with intent to distribute cocaine base.

3 It is not necessary for the Government to prove that
4 the defendants conspired to commit both of the unlawful acts.
5 If you find the Government has proven beyond a reasonable doubt
6 that a defendant conspired to commit either one of these
7 unlawful acts, you should find that defendant guilty of the
8 conspiracy charged in the indictment.

9 Let me caution you, however, that your decision as to
10 whether a defendant conspired to commit a particular unlawful
11 act, either distribution of cocaine base or possession with
12 intent to distribute cocaine base, must be unanimous.

13 If you have unanimously agreed as to the defendant you
14 are considering that the Government has failed in its burden of
15 proof to establish a conspiracy to possess with intent to
16 distribute, you must then continue your deliberations to
17 determine whether or not the Government has met its burden of
18 proof beyond a reasonable doubt to establish each of the
19 elements of conspiracy to distribute.

20 If you find that the Government has failed to
21 establish both a conspiracy to possess with intent to
22 distribute and a conspiracy to distribute" -- and, again, each
23 of the elements of those -- "your verdict is not guilty.

24 If you find that the Government has met its burden of
25 proof to establish each of the elements by proof beyond a

1 reasonable doubt, either of a conspiracy to possess with intent
2 to distribute or a conspiracy to distribute, then your verdict
3 would be guilty."

4 And, of course, all of your decisions on anything that
5 I have articulated must be unanimous.

6 So, with those further instructions, I'll ask you to
7 retire and continue your deliberations.

8 (The jury leaves the courtroom and continues
9 deliberations.)

10 THE COURT: Okay.

11 (Off the record.)

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1 (In open court; all parties present.)

2 (Defendants Pughe and Taylor enter the courtroom.)

3 THE COURT: All right. We have a note that I'm sure
4 you've seen, correct?

5 MR. STERN: Yes.

6 MR. AMATRUDA: Yes, Judge.

7 THE COURT: Can we please request the written
8 transcript of what you just read to us in court? I had the
9 court reporter prepare it, Court Exhibit 12. It looks accurate
10 to me.

11 Did the parties just want to take a --

12 MR. STERN: We've read it already.

13 MR. KAMDANG: No objection.

14 MR. AMATRUDA: We've read it, Judge. That's fine.

15 THE COURT: Okay. Then I'll just send it back.

16 MR. STERN: Good.

17 THE COURT: I'll just put it on the bottom of their
18 note. Okay.

19 I just put on their note: "Attached is the transcript
20 of my comments that you requested."

21 MR. STERN: Can we get lunch and come back at 2:00?

22 COURTROOM DEPUTY: I don't think it's going to be much
23 longer.

24 THE COURT: I think they should wait here.

25 COURTROOM DEPUTY: I think they should have a half an

1 hour, not an hour.

2 MR. STERN: We'll be back at 1:30.

3 THE COURT: Okay. Good.

4 (Off the record.)

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1 (In open court; all parties presents.)

2 (Defendants Pughe and Taylor enter the courtroom.)

3 THE COURT: All right. I have a note that says:

4 "Dear Judge Amon, we've reached a unanimous decision
5 on both defendants and are ready to render our verdict."

6 So, I'm going bring the jury out.

7 I know this is difficult for family members. So, I
8 just would ask you to respect the jury and to be quiet either
9 way in terms of what the verdict is. I know you'll do that
10 because you've behaved very well during the course of these
11 proceedings, and it's just difficult for everyone.

12 (Brief pause.)

13 (The jury enters the courtroom.)

14 THE COURT: All right. Ladies and gentlemen, please
15 be seated.

16 I have a note that you've reached a verdict, and I'll
17 ask my courtroom deputy to take the verdict.

18 So, would the foreperson please rise for taking the
19 verdict? Okay.

20 COURTROOM DEPUTY: Regarding Defendant Darien Pughe,
21 conspiracy to distribute and possess with intent to distribute,
22 how do you find the defendant, guilty or not guilty?

23 THE FOREMAN: Not guilty.

24 COURTROOM DEPUTY: Regarding Defendant Dewayne Taylor,
25 conspiracy to distribute and possess with intent to distribute,

1 how do you find the defendant, guilty or not guilty?

2 THE FOREMAN: Guilty.

3 THE COURT: You have to take questions, Vanessa. You
4 have to ask them those questions.

5 COURTROOM DEPUTY: I'm sorry. I'm sorry, Judge.

6 "Do you find that the Government proved beyond a
7 reasonable doubt that the conspiracy charged in the indictment
8 involved cocaine base?"

9 THE FOREMAN: Yes.

10 COURTROOM DEPUTY: "Do you find that the Government
11 proved beyond a reasonable doubt that the conspiracy charged in
12 the indictment involved 50 grams or more?"

13 THE FOREMAN: Yes.

14 THE COURT: All right. Do the parties want the jury
15 polled?

16 MR. STERN: We do not.

17 MR. KAMDANG: Yes, your Honor.

18 THE COURT: All right. Then with respect to the
19 defendant Dewayne Taylor, Juror No. 1, is this your verdict?

20 I'm just asking if this is your verdict as well.

21 JUROR NO. 1: Yes.

22 THE COURT: Juror No. 2, is this your verdict?

23 JUROR NO. 2: Yes.

24 THE COURT: Juror No. 3, is this your verdict?

25 JUROR NO. 3: Yes.

1 THE COURT: Juror No. 4, is this your verdict?

2 JUROR NO. 4: Yes.

3 THE COURT: Juror No. 5?

4 JUROR NO. 5: Yes.

5 THE COURT: Juror No. 6?

6 JUROR NO. 6: Yes.

7 THE COURT: Juror No. 7?

8 JUROR NO. 7: Yes.

9 THE COURT: Juror No. 8?

10 JUROR NO. 8: Yes.

11 THE COURT: Juror No. 9?

12 JUROR NO. 9: Yes.

13 THE COURT: Juror No. 10?

14 JUROR NO. 10: Yes.

15 THE COURT: Juror No. 11?

16 JUROR NO. 11: Yes.

17 THE COURT: Juror No. 12?

18 JUROR NO. 12: Yes.

19 THE COURT: All right. Ladies and gentlemen, at this
20 point in time I will excuse you from jury service; and I do so
21 with the very sincere thanks from the Court for the time and
22 attention you have devoted to this matter. You're now excused.

23 (The jury leaves the courtroom and is excused from
24 service.)

25 THE COURT: We just need to set a date in Mr. Taylor's

1 case. Think with respect to Mr. Pughe's case, he needs to
2 be -- I understand from Ms. Holly he hasn't been interviewed?

3 MR. STERN: I didn't want him interviewed while this
4 case was pending in case he needed to testify. Now he's
5 prepared to be interviewed.

6 THE COURT: We need to set a date on that. I think
7 the date that was set may not work.

8 MR. STERN: Tomorrow, you mean?

9 THE COURT: No, I think she was planning on another
10 date.

11 MR. STERN: Okay.

12 THE COURT: So, everybody can just be seated. I'm
13 just going to set a schedule for Mr. Taylor.

14 MR. KAMDANG: Your Honor, I wonder if it would make
15 sense to put that off. We discussed briefly yesterday to put
16 in a letter to reopen the suppression hearing to put the video
17 in. I think it might make sense to set a sentencing date after
18 that letter. Perhaps we could set a deadline to put that
19 letter in.

20 THE COURT: Put that letter in by Monday.

21 MR. KAMDANG: I have another jury trial starting on
22 Monday before Judge Ross. Could I put it in next Friday?

23 THE COURT: Yeah. That's fine. We'll extend it. All
24 right.

25 COURTROOM DEPUTY: You waiting for me, Judge?

1 THE COURT: Yes. I want to set the sentence date.

2 Add an extra week.

3 COURTROOM DEPUTY: October 2nd, Friday, October 2nd at
4 9:30, sentencing.

5 MR. STERN: Are you talking to me, too?

6 THE COURT: No. I just mentioned to Mr. Stern we
7 needed to set another date for Mr. Pughe, but we're not doing
8 that now.

9 MR. KAMDANG: That's fine.

10 COURTROOM DEPUTY: That would mean that defense's --
11 your submissions, Mr. Kamdang, would be due the 18th of
12 September and the Government's response September 25th.

13 THE COURT: All right. Is there anything else that we
14 need to take up at this point?

15 MR. KAMDANG: No, your Honor.

16 MR. AMATRUDA: No, Judge.

17 THE COURT: Okay. All right. Thank you.

18 (Whereupon the proceedings adjourned.)

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